

Application No.: 10/797,986

### AMENDMENTS TO THE DRAWINGS

The drawings have been corrected to add a reference numeral "203" referring to "pipes 203" mentioned in the specification. A corrected drawing sheet is enclosed. The legend "REPLACEMENT SHEET" is included at the top of the corrected drawing sheet.

REMARKS/ARGUMENTS

The Office Action mailed June 19, 2007 has been carefully reviewed. Reconsideration of this application is respectfully requested. The original application contained claims 1-59. Claims 1-55 are withdrawn from consideration. The claims presented for examination are: claims 56-59.

Restriction Requirement

Drawings

In numbered paragraph 4 of the Office action mailed June 19, 2007, the drawings were objected to because the "fluid distribution system" in claim 56 must be shown or the features(s) canceled from the claim(s). The term "fluid distribution system" has been cancelled from the claims. The claims presented for examination use the term "municipal water distribution system." The term "municipal water distribution system" is a well established term, the term "municipal water distribution system" is described in the specification, and the term "municipal water distribution system" is shown in the drawings.

In numbered paragraph 5 of the Office action mailed June 19, 2007, the drawings were objected to because, allegedly, the drawings do not include the following reference signs(s) mentioned in the description: "203, 205, 206, 207, 208, and 210." Applicants have reviewed the drawings and it is clear the drawings do include the reference numerals: "205, 206, 207, 208, and 210." The drawings do not include the reference numeral "203."

The drawings have been corrected to add a reference numeral "203" referring to "pipes 203" mentioned in the specification. A corrected drawing sheet is enclosed. The legend "REPLACEMENT SHEET" is included at the top of the corrected drawing sheet.

### **35 U.S.C. §1.12 Rejection**

In numbered paragraph 86 of the Office Action mailed June 19, 2007, claims 56-59 were rejected under 35 U.S.C. §1.12, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 56 was indicated to recite the broad phrase “fluid distribution system” and “It is not clear from the claims the components include a fluid distribution system.

Applicants have amended claims 56-58 and cancelled claim 59. The term “fluid distribution system” has been removed from claims 56-58. Claims 56-58 use the term “municipal water distribution system.” The term “municipal water distribution system” is well established and “municipal water distribution system” is described in the specification.

Applicants believe that the amendment overcomes the rejection of claims 56-59 under 35 U.S.C. §1.12, second paragraph, and that a complete response to the rejection has been provided.

### **35 U.S.C. § 103 Rejection – Fukunaga et al In View of Havlena**

In numbered paragraph 11 of the Office Action mailed June 19, 2007 claims 56-59 were rejected under 35 U.S.C. §103(a) as being unpatentable over the Fukunaga et al primary reference (US 6,290,908) in view of the Havlena secondary reference (US 2002/0189362).

### **Prima Facie Case of Obviousness Has Not Been Established**

The rejection of claims 56-59 under 35 U.S.C. §103(a) is respectfully traversed. Claims 56-58 have been amended and claim 59 has been cancelled. The Examiner bears the initial burden of factually supporting a *prima facie* conclusion of obviousness (M.P.E.P. Section 2142). To establish a *prima facie* case of obviousness, three basic criteria must be met. The prior art reference (or

reference when combined) must teach or suggest all the claim limitations. The Examiner must provide reasons for combining the references (Margaret A. Focarino May 3, 2007 Memorandum Re: Supreme Court decision on KSR Int'l. Co. v. Teleflex, Inc.). There must be a reasonable expectation of success. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Appellant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). In assessing any *prima facie* conclusion of obviousness the guidance of the Supreme Court in *Graham v. John Deere Co.* is used. *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966) requires determining: "the scope and content of the prior art," ascertaining "the differences between the prior art and the claims at issue," and resolving "the level of ordinary skill in the pertinent art."

#### **References Do Not Teach All Claim Limitations**

The criteria that prior art reference (or reference when combined) must teach or suggest all the claim limitations has not been met. The Fukunaga et al reference and the Havlena reference do not disclose many Applicants' claim limitations. In assessing any *prima facie* conclusion of obviousness the guidance of the Supreme Court in *Graham v. John Deere Co.* is used. *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966) requires determining: "the scope and content of the prior art" and ascertaining "the differences between the prior art and the claims at issue." The Fukunaga et al reference and the Havlena reference do not disclose the limitations of Applicants' claims 56-58 identified below.

"sensing biochemicals or sporulated bacteria or viral organisms or microbial organisms or elemental chlorine or oxidative oxy-halogen compounds or ozone or oxygen or peroxydisulfate or strong reducing agents or hyposulfite or thiosulfate or sulfide or H<sub>2</sub>S or cyanide or selenium or lead sensor or mercury or arsenic or nerve agents or blistering or VX or Lewisite or G-agents or phosgene or gas or actinides or radioactive isotopes or radioactive iodine or radioactive cesium or

radioactive strontium sensor or thorium or radioactive cobalt or radioactive thorium contaminates that have been introduced into the water," or

"producing an acoustic signal in the water in the water filled pipe or water filled pipes upon the sensing of biochemicals or sporulated bacteria or viral organisms or microbial organisms or elemental chlorine or oxidative oxy-halogen compounds or ozone or oxygen or peroxydisulfate or strong reducing agents or hyposulfite or thiosulfate or sulfide or H<sub>2</sub>S or cyanide or selenium or lead sensor or mercury or arsenic or nerve agents or blistering or VX or Lewisite or G-agents or phosgene or gas or actinides or radioactive isotopes or radioactive iodine or radioactive cesium or radioactive strontium sensor or thorium or radioactive cobalt or radioactive thorium contaminates that have been introduced into the water," or

"using the water filled pipe or water filled pipes as wave-guides or channels for transmitting said acoustic signal," or

"receiving said acoustic signal in the water filled pipe or water filled pipes wherein said acoustic signal has been transmitted using the water filled pipe or water filled pipes as wave-guides or channels," or

"signaling the supervisory control and data acquisition system upon receiving said acoustic signal indicating said sensing of the biochemicals or sporulated bacteria or viral organisms or microbial organisms or elemental chlorine or oxidative oxy-halogen compounds or ozone or oxygen or peroxydisulfate or strong reducing agents or hyposulfite or thiosulfate or sulfide or H<sub>2</sub>S or cyanide or selenium or lead sensor or mercury or arsenic or nerve agents or blistering or VX or Lewisite or G-agents or phosgene or gas or actinides or radioactive isotopes or radioactive iodine or radioactive cesium or radioactive strontium sensor or thorium or radioactive cobalt or radioactive thorium contaminates that have been introduced into the water, or

"method of providing early warning of contamination of water in a municipal water distribution system by detecting chemical or biological agent contaminates introduced into the water of the municipal water distribution system wherein the municipal water distribution system utilizes a water filled pipe or water filled pipes extending from a water source to a supervisory control and data acquisition system."

Since the limitations listed and described above are not shown by either the Fukunaga et al reference or the Havlena reference, a *prima facie* case of obviousness has not been established. Further, since both the Fukunaga et al reference and the Havlena reference fail to show the claim limitations of Applicants' claims 56-58 there can be no combination of the two references that would show Applicant's invention. There is no combination of Fukunaga et al reference and the Havlena reference that would produce the combination of elements of Applicants' claims 56-58. Thus, the combination of references in the Office Action mailed June 19, 2007 fails to support a rejection of claims 56-59 under 35 U.S.C. §103 (a), and the rejection should be withdrawn.

**No Reasons for Combining Fukunaga et al and Havlena References**

The criteria that the Examiner must provide reasons for combining the references (Margaret A. Focarino May 3, 2007 Memorandum Re: Supreme Court decision on KSR Int'l. Co. v. Teleflex, Inc.) has not been established. The rejection in the Office Action mailed June 19, 2007 does not provide an explanation of how or why the Fukunaga et al reference and the Havlena reference would be combined.

Neither the Fukunaga et al reference or the Havlena reference recognizes the problem solved by Applicant's claimed invention. The Fukunaga et al reference and the Havlena reference fail to recognizes the problem of "providing early warning of contamination of water in a municipal water distribution system by detecting chemical or biological agent contaminates introduced into the water of the municipal water distribution system wherein the municipal water distribution system utilizes a water filled pipe or water filled pipes extending from a water source to a supervisory control and data acquisition system."

Neither the Fukunaga et al reference or the Havlena reference disclose the benefits of Applicants claimed invention provided by "sensing biochemicals or sporulated bacteria or viral organisms or microbial organisms or elemental chlorine or oxidative oxy-halogen compounds or ozone or oxygen or peroxydisulfate or strong reducing agents or hyposulfite or thiosulfate or sulfide or H<sub>2</sub>S or cyanide or selenium or lead sensor or mercury or arsenic or nerve agents or blistering or VX or Lewisite or G-agents or phosgene or gas or actinides or radioactive isotopes or radioactive iodine or radioactive cesium or radioactive strontium sensor or thorium or radioactive cobalt or radioactive thorium contaminates that have been introduced into the water," or by "producing an acoustic signal in the water in the water filled pipe or water filled pipes upon the sensing of biochemicals or sporulated bacteria or viral organisms or microbial organisms or elemental chlorine or oxidative oxy-halogen compounds or ozone or oxygen or peroxydisulfate or strong reducing agents or hyposulfite or thiosulfate or sulfide or H<sub>2</sub>S or cyanide or selenium or lead sensor or mercury or arsenic or nerve agents or blistering or VX or Lewisite or G-agents or phosgene or gas or actinides or radioactive isotopes or radioactive iodine or radioactive cesium or radioactive strontium sensor or thorium or radioactive cobalt or radioactive thorium contaminates that have been introduced into the water," or by "using the water filled pipe or water filled pipes as wave-guides or channels for transmitting said acoustic signal," or by "receiving said acoustic signal in the water filled pipe or water filled pipes wherein said acoustic signal has been transmitted using the water filled pipe or water filled pipes as wave-guides or channels," or by "signaling the supervisory control and data acquisition system upon receiving said acoustic signal indicating said sensing of the biochemicals or sporulated bacteria or viral organisms or microbial organisms or elemental chlorine or oxidative oxy-halogen compounds or ozone or oxygen or

peroxydisulfate or strong reducing agents or hyposulfite or thiosulfate or sulfide or H<sub>2</sub>S or cyanide or selenium or lead sensor or mercury or arsenic or nerve agents or blistering or VX or Lewisite or G-agents or phosgene or gas or actinides or radioactive isotopes or radioactive iodine or radioactive cesium or radioactive strontium sensor or thorium or radioactive cobalt or radioactive thorium contaminates that have been introduced into the water.” Thus, the combination of references in the Office Action mailed June 19, 2007 fails to support a rejection of claims 56-58 under 35 U.S.C. §103 (a), and the rejection should be withdrawn.



**SUMMARY**

The undersigned respectfully submits that, in view of the foregoing amendments and the foregoing remarks, the rejections of the claims raised in the Office Action dated June 19, 2007 have been fully addressed and overcome, and the present application is believed to be in condition for allowance. It is respectfully requested that this application be reconsidered, that the claims be allowed, and that this case be passed to issue. If it is believed that a telephone conversation would expedite the prosecution of the present application, or clarify matters with regard to its allowance, the Examiner is invited to call the undersigned attorney at (925) 424-6897.

Respectfully submitted,



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